

January 15, 2008

**BY FAX TO (212) 805-7930**

Hon. James C. Francis IV  
United States Magistrate Judge  
United States District Court  
500 Pearl Street, Room 1960  
New York, NY 10007-1312

USDC SDNY	<b>MEMO ENDORSED</b>
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ELECTRONICALLY FILED	
DOC #:	
DATE FILED: 1/23/08	

Re: *Araneda, et al., v. The City of New York, et al.*, 05 CV 9738 (RJS) (JCF)

Dear Judge Francis:

I am an attorney for plaintiffs in the above-captioned case, which is among the RNC Consolidated Cases. The defendants have completed all depositions which they noticed; there are a few depositions plaintiffs have noticed which the defendants have continued, and which the parties expect will be completed in the next few weeks. Plaintiffs now make this motion to preclude certain evidence.

This action arises out of protest activity on 35<sup>th</sup> Street between 5<sup>th</sup> and 6<sup>th</sup> Avenues on August 31, 2004. Chief Bruce Smolka was the supervisor in charge of the arrests at that location.

Motion to Perclude Testimony from Scooter Squad Officers on 35<sup>th</sup> Street during the arrests on August 31, 2004.

Chief Smolka testified at his January 11, 2007, deposition that he made the decision to arrest people at the location. As part of the process of detaining plaintiffs, he called in a squad of officers on motorscooters (the "scooter squad") to close off the 5<sup>th</sup> Avenue end of 35<sup>th</sup> Street (1/11/07 Smolka deposition at 373). At his continued deposition on January 25, 2007, Chief Smolka identified an officer who is depicted in a video of the arrests on 35<sup>th</sup> Street as "[a] Lieutenant in the first precinct scooter task force." (1/25/07 Smolka deposition at 156.) Smolka did not identify the lieutenant by name.

None of the officers operating the scooters have ever been identified, nor have they been produced for depositions. Nor has the City produced any documents concerning the activities of a scooter squad on 35<sup>th</sup> Street that evening.

On June 24, 2007, I informed the assigned Assistant Corporation Counsel, Cheryl Shammash, that plaintiffs wished to depose the officer in command of the scooter squad. In the schedule of defense witnesses produced by the defendants on July 2, 2007, (which was then So Ordered) a deposition is scheduled on November 13, 2007, for a "Scooter Supervisor (35<sup>th</sup> & 5-6th)."

On November 12, 2007, I consented to a request by A.C.C. Fred Weiler to continue the Scooter Supervisor deposition, since defendants were unable to identify him.

On January 7, 2008, I informed Mr. Weiler that if they had not identified the supervisor of the scooter squad by January 15, 2008, and made arrangements for him to appear at a deposition, I would be required to make this motion to the Court, in light of Your Honor's November 26, 2007, Order.

Plaintiffs now move to preclude the defendants from offering any testimony from any officer or supervisor associated with the scooter squad operating on 35<sup>th</sup> Street between 5<sup>th</sup> and 6<sup>th</sup> Avenues on the evening of August 31, 2004.

Respectfully submitted,



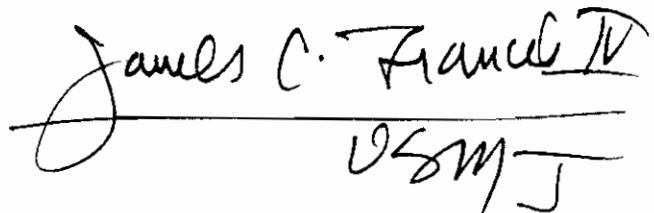
Norman Best (NB 1968)

cc: Fred Weiler, Esq. (by fax)

1/22/08

Application denied as moot  
since the individual has  
now been identified.

SO ORDERED.

  
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OSMJ